HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 524 of 2004

1. Smt. Nirmal Bhadula w/o Sri S.K. Bhadula
2. S.K. Bhadula s/o Sri Ishwari Dutt Bhadula
3. Sidhartha Bhadula, s/o Sri S.K. Bhadula
   All residents of Flat No. 5, IInd Floor,
   River View Apartments, Dr. Birbal Sahni
   Road, Near Hanuman Mandir, Lucknow

..... Applicants

Versus

1. State of Uttaranchal
2. Smt. Manisha Bhadula d/o Sri Sohan Lal Bijalwan
   R/o B 264-B, Defence colony, Sector 4,
   Dehradun, District Dehradun ..... Respondents

Dated: 8.12.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.S. Chauhan counsel for the petitioner and A.G.A. for the State.

By the present application under section 482 Cr.P.C. the petitioner has prayed for quashing of the proceedings in Criminal Case No. 1779 of 2004 State vs. Sidhartha Bhadula and others under section 323, 504, 506 & 498A I.P.C. and Section3/4 of Dowry Prevention Act, pending in the Court of Judicial Magistrate, Dehradun.

Briefly stated the marriage of the applicant no. 3 Sri Sidharth Bhadula was solemnized with the opposite party no.2 Smt. Manisha on 11.3.2001 at Dehradun according to the Hindu rites. According to the applicants, the respondent no. 2 has left

the house of her husband without any reason and started living in her parents' house. Applicant no. 3, therefore, instituted a suit No. 1544 of 2003, Sidhartha Bahadula vs. Smt. Manisha under section 9 of the Hindu Marrige Act, for restitution of conjugal rights in the Court of Judge, Family Court, Lucknow. According to the applicants notices of the aforesaid cases was received on 6.9.2004.

According to the applicants as a counter blast of the aforesaid suit, the respondent no. 2 lodged the F.I.R. on 6.9.2004 in case crime no. 81 of 2004 under section 498A, 3213, 504 and 506 I.P.C. and Section ¾ of Dowry Prohibition Act. The applicants have challenged the F.I.R. dated 6.9.2004 in Criminal Writ Petition no. 921 (MB) of 2004 before this court and vide order dated 17.9.2004, it was directed that no coercive measure be taken against the applicants.

Since the applicants are being prosecuted for the offence punishable under sections 498-A, 323, 504, 506 I.P.C. and ¾ of the Dowry Prohibition Act, it will be open for the petitioners to defend their case before the Court concerned. Since the disputed question of fact with regard to the offence punishable under sections 498A, 323, 504, 506 I.P.C. and ¾ of the Dowry Prohibition Act, are involved, therefore, prima facie no case can is made out for interference under Section 482 Cr.P.C. at this stage.

After relying upon the judgment in ***State of Haryana and others v. Ch. Bhajan Lal and others in AIR 1992 SC604,*** *in* ***Union of India Vs. Prakash P. Hinduja and***

another 2003 SCC (Cri) 1314, *the Apex Court has held as under:*

> *""9. ...The grounds on which the prosecution initiated against an accused can also be quashed by the High Court in exercise of power conferred by Section 482 CrPC has been settled by a catena of decisions of this Court rendered in R.P. Kapur v. State of Punjab AIR 1960 SC 866, Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551, Municipal Corpn. Of Delhi v. Ram Kishan Rohtagi (1983) 1 SCC 1 and Raj Kapoor v. State (1980) 1 SCC 43. The matter was examined in considerable detail in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 and after review of practically all the earlier decisions, the Court in para 108 of the Report laid down the grounds on which power under Section 482 CrPC can be exercised to quash the criminal proceedings and basically they are: (1) where the allegations made in the FIR or complainant, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any ofence or make out a case against the accused, (2) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (3) where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.*

10. The principal question which, therefore, requires consideration is whether the court can go into the validity or otherwise of the investigation done by the authorities charged with the duty of investigation under the relevant statutes and whether any error or illegality committed during the course of investigation would so vitiate the charge-sheet so as to render the cognizance taken thereon bad and invalid."

Without entering into the merits of the case at this stage I do not see any ground to interfere under Section 482 Cr.P.C. However, it is made clear that since according to the applicants it is a counter blast in order to defend the proceedings under section 9 of the Hindu Marriage Act, it is desirable that let the applicant no. 1 who is a lady, and applicant no. 2 who is father –in-law age about 65 years be released on furnishing appearance bonds for their regular appearance in the case. However, so far as applicant no. 3 is concerned, his bail application shall be expedited as expeditiously as possible, if possible on the same day as he is posted in the army.

Subject to the observations made above, application under section 482 Cr.P.C. is dismissed.

(Rajesh Tandon, J.)

Dated: 8.12.2006
*Dhyani